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October 5, 2001

Via E-mail and Overnight Courier

Mary L. Cottrell, Secretary
Department of Telecommunications & Energy
Commonwealth of Massachusetts
One South Station, Second Floor
Boston, MA 02110

Re: **D.T.E. 01-34**; Investigation by the Department of Telecommunications
into Verizon Massachusetts' provision of Special Access Services -
Joint Reply Comments of Cable & Wireless USA, Inc. and Global
Crossing North America, Inc. in Opposition to the Verizon Motion

Dear Secretary Cottrell:

Pursuant to the Notice issued by Hearing Officer Evans, Cable & Wireless USA, Inc., and Global Crossing North America, Inc., submit these Joint Reply Comments in Opposition to the Verizon Motion for Partial Reconsideration and/or Clarification ("Verizon Motion") of the Department's August 9, 2001 Order ("Order") in the above captioned proceeding.

Verizon provides no justifiable basis for the relief it seeks. Though styled as a motion seeking "reconsideration or clarification," the Verizon motion clearly seeks reconsideration and reversal of a decision made without any of the infirmities that would justify such reconsideration.

The Verizon motion mischaracterizes the Department's Order in a futile attempt to meet the high burden the company acknowledges it faces. The Order never implied that the

October 5, 2001
Page Two

intrastate data was anything but a complete set of that data. Verizon attempts to manufacture some “mistake or inadvertence” by claiming that the Department’s reference to a “small sample size” referred to a sample of the intrastate data¹ and not to the fact that the intrastate data represents only a small sample (in fact a tiny fraction) of the special access universe.² In its Order, the Department is clearly addressing the fact that intrastate circuits make up only 0.6% of the special access circuits provisioned in Massachusetts when it concludes that, “[b]ecause of this very small sample size, this data does not provide the Department with an accurate view of Verizon’s provision of special access services in the Commonwealth.”³ For Verizon to even claim that this signifies mistake or inadvertence demonstrates the level of its desperation in attempting to shield its extremely poor special access performance from investigation by this Department.

In deciding to investigate the interstate performance, the Department drew a clear distinction between investigation for the purpose of regulation and investigation for the purpose of elucidation. In its comments, WorldCom presents a quite reasoned interpretation of the Department’s Order, noting that the purpose of the investigation is to “determine whether some regulatory action is needed with respect to state tariffed circuits, over which [the Department] clearly has authority,” and that “the investigation of federally tariffed circuits will aid in that endeavor.”⁴

In light of the similarity that exists between its intra- and inter-state circuits, it is entirely appropriate, and in fact essential, for the Department to examine Verizon’s performance

¹ Verizon motion, at page 4.

² Verizon has already admitted that over 99% of the special access circuits in Massachusetts are provisioned out of the interstate tariff. Order at pages 2 and 11.

³ Order at page 12.

⁴ Comments of WorldCom, at page 2. *See also*, Comments of XO Massachusetts and CTC Communications at page two, that appropriately characterize the Department’s Order as “striking a balance” between ensuring reasonable service on intrastate circuits and avoiding action the Department views as preempted by FCC jurisdiction.

October 5, 2001
Page Three

with regard to interstate circuits.⁵ The examination of both types of circuits is needed in order to produce a data sample large enough to support reasoned conclusions and appropriate performance improvement plans.⁶ In other words, since 99% of the special access circuits are interstate, an examination that focuses upon only 1% and ignores the remainder is inadvisable; that is precisely what the Department held and what Verizon apparently fears.⁷

For the reasons stated herein as well as those contained in the comments previously filed in opposition to the Verizon motion, the DTE should deny Verizon's motion and subject all of the data contained in the Verizon reports to a full and complete examination. Should you have any questions or concerns with regard to this filing, please do not hesitate to contact the undersigned at your convenience.

Respectfully submitted,

Andrew M. Klein

AMK:mla

cc: Joan Foster Evans, Hearing Officer
DTE 01-34 Service List

⁵ Verizon admits that "its provisioning of the federal circuits is identical to its provisioning of in-state circuits." Order at page 12. As a result, Cable & Wireless USA and Global Crossing North America agree that the Department's examination of the Verizon report containing performance for interstate circuits "must be scrutinized and fully investigated" in order to determine whether Verizon is reasonably providing intrastate special access. Comments of Allegiance Telecom and PaeTec Communications, at pages 1-2.

⁶ As AT&T appropriately notes, there is nothing unusual about the Department considering evidence related to matters over which it does not have jurisdiction to grant relief, when such evidence is relevant to matters within its jurisdiction. Comments of AT&T at pages 4 and 5. It is hard to imagine a circumstance more worthy of such consideration than the instant matter.

⁷ As noted in the initial comments, the New York Commission recently examined Verizon's performance with respect to both inter- and intra-state circuits, and has concluded that Verizon is providing substandard and discriminatory special access performance. Comments of WorldCom at page 2, *citing* May 22, 2001, letter from NY PSC Chairman Helmer to FCC Chairman Powell.